

Memorandum 95-68

Tolling When Defendant Is Out of State: Draft of Final Recommendation

Attached is a draft of a final recommendation calling for repeal of Code of Civil Procedure Section 351. Please pay particular attention to proposed Section 116.350 on pages 6-7. At the last meeting, the Commission directed the staff to revise proposed Section 116.350 to clarify what happens if a claim is transferred out of small claims court and then amended to seek increased recovery. Subdivision (b) of proposed Section 116.350 would make out-of-state tolling inapplicable to "any excess over the jurisdictional limit of the small claims court at the time the case was filed." Is that the appropriate limit, or should out-of-state tolling be restricted to the amount of the claim at the time of being transferred out of small claims court?

Section 116.350 is intended to address the concern of the Judicial Council Civil and Small Claims Advisory Committee regarding the existing requirement that process in most small claims cases be served within the state (Code of Civil Procedure Section 116.340). The staff is soliciting the Civil and Small Claims Advisory Committee's input on this draft and will supplement this memorandum with any comments received.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

RECOMMENDATION

Tolling Statute of Limitations
When Defendant Is Out of State

November 1995

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
(415) 494-1335 FAX: (415) 494-1827

November 2, 1995

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation proposes the repeal of Code of Civil Procedure Section 351, which tolls statutes of limitations when the defendant is out of the state. Section 351 is based on outdated notions of personal jurisdiction and service of process, and it is unconstitutional as applied to cases involving interstate commerce. Repeal of Section 351 would further the policies underlying statutes of limitations, protect courts from having to adjudicate stale claims lacking any meaningful connection to the state, and eliminate inequities that may arise when tolling is applied to brief periods of absence.

The recommendation would also require courts to extend the delay reduction deadline for service of process where the plaintiff shows that even with the exercise of due diligence, service cannot be achieved in the time required.

This recommendation was prepared pursuant to Resolution Chapter 81 of the Statutes of 1994, continued in Resolution Chapter 87 of the Statutes of 1995.

Respectfully submitted,

Colin Wied
Chairperson

TOLLING STATUTE OF LIMITATIONS WHEN DEFENDANT IS OUT OF STATE

INTRODUCTION

1 Code of Civil Procedure Section 351 tolls the statute of limitations when the
2 defendant is out of state:

3 351. If, when the cause of action accrues against a person, he is out of the State,
4 the action may be commenced within the term herein limited, after his return to
5 the State, and if, after the cause of action accrues, he departs from the State, the
6 time of his absence is not part of the time limited for the commencement of the
7 action.

8 The tolling provision now codified as Section 351 dates from as early as 1850,¹
9 in an era when out-of-state service of process was insufficient to confer personal
10 jurisdiction.² Without tolling, a defendant could escape liability by staying outside
11 the state where a cause of action accrued until the statute of limitations ran. A
12 plaintiff who was unable or unwilling to pursue the defendant in the defendant's
13 place of residence was left without a means of redressing the injury. By tolling the
14 limitations period during a defendant's absence from California, Section 351
15 preserved the plaintiff's right to redress until the defendant could be served within
16 the state.

17 Out-of-state service of process is now widely available, and recent commentary
18 and judicial decisions criticize Section 351.³ Additionally, the tolling of Section
19 351 is riddled with exceptions. It does not apply to corporations,⁴ limited

1. See Compiled Laws of the State of California, Chapter CXLVIII, Chapter IV, Section 22 (1850-1853).

2. See *Pennoyer v. Neff*, 95 U.S. 714 (1877).

3. See *O'Laskey v. Sortino*, 224 Cal. App. 3d 241, 252 n.8, 273 Cal. Rptr. 674 (1990) (Section 351 no longer makes sense and should be repealed); *Abramson v. Brownstein*, 897 F.2d 389, 391-93 (9th Cir. 1990) (Section 351 is unconstitutional as applied to cases involving interstate commerce); Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639 (1992).

4. *Epstein v. Frank*, 125 Cal. App. 3d 111, 119 n.4, 177 Cal. Rptr. 831 (1981) (“[n]either a foreign corporation nor a domestic corporation is deemed absent from the state when its officers are absent and the statute of limitations is not tolled pursuant to section 351 of the Code of Civil Procedure as to either of such entities”); see also *Cardoso v. American Medical Systems, Inc.*, 183 Cal. App. 3d 994, 998-99, 228 Cal. Rptr. 627 (1986); *Loope v. Greyhound Lines, Inc.*, 114 Cal. App. 2d 611, 250 P.2d 651 (1952).

1 partnerships,⁵ nonresident motorists,⁶ or certain resident motorists,⁷ nor in certain
2 tax proceedings⁸ or actions in rem.⁹

3 The Law Revision Commission examined Section 351, its purposes and
4 operation, and other mechanisms in the law available to achieve the same goals.
5 The Commission concluded that Section 351 causes substantial problems and no
6 longer serves a useful purpose.¹⁰ It should be repealed.

PROBLEMS WITH SECTION 351

Unconstitutional as Applied to Interstate Commerce

7 Section 351 imposes a significant burden on nonresidents. Essentially, it means
8 that the statute of limitations on a cause of action will never run so long as the
9 defendant remains out of the state. Thus, a nonresident potentially subject to suit in
10 California must either stay in the state for the duration of the applicable limitations
11 period, or must remain subject to suit in California in perpetuity.¹¹ Because
12 Section 351 imposes that heavy burden without sufficient justification, the Ninth
13 Circuit Court of Appeals ruled it unconstitutional as applied to cases involving
14 interstate commerce.¹²

Unfair Results

15 Section 351 applies to any absence from California, no matter how long or
16 short.¹³ As a result, a plaintiff who misses the statute of limitations by a few days
17 may point to Section 351 and contend that the defendant was out of California for
18 part of the limitations period so tolling applies and the suit is timely. The fortuity
19 of whether the defendant happened to take a brief vacation out of the state during
20 the limitations period may thus determine the outcome of the suit. That is arbitrary

5. Epstein v. Frank, 125 Cal. App. 3d 111, 120, 177 Cal. Rptr. 831 (1981).

6. Bigelow v. Smik, 6 Cal. App. 3d 10, 15, 85 Cal. Rptr. 613 (1970) (“since a nonresident motorist is amenable to service of process within the state and to the entry of personal judgment against him, the reason for section 351 is not present, the section does not apply, and the period of limitation for commencing suit against him does not suspend”).

7. Vehicle Code Section 17460 provides that by accepting a California driver’s license, a California resident consents to out-of-state service of process in any action arising out of the resident’s “operation” of a motor vehicle in California. Vehicle Code Section 17459 is a similar provision pertaining to a resident’s acceptance of a certificate of ownership or registration. Under Vehicle Code Section 17463, if service can be made pursuant to Vehicle Code Section 17459 or 17460, then the tolling of Section 351 does not apply, “except when [the resident] is out of this State and cannot be located through the exercise of reasonable diligence.”

8. See Rev. & Tax. Code §§ 177, 3725, 3809.

9. Ridgway v. Salrin, 41 Cal. App. 2d 50, 54, 105 P.2d 1024 (1940).

10. *But see* note 19, *infra*, regarding small claims cases.

11. Abramson v. Brownstein, 897 F.2d 389, 392 (9th Cir. 1990).

12. *Id.* at 393; *see also* Bendix Corp. v. Midwesco Enterprises, 486 U.S. 888 (1988).

13. *See, e.g.,* Mounts v. Uyeda, 227 Cal. App. 3d 111, 114, 277 Cal. Rptr. 730 (1991) (four-day absence); Garcia v. Flores, 64 Cal. App. 3d 705, 709, 134 Cal. Rptr. 712 (1976) (eight-day absence).

1 and unfair, particularly with regard to a plaintiff who lacked contemporaneous
2 knowledge of the defendant's absence and cannot claim that the absence interfered
3 with serving the defendant.¹⁴

Stale Claims Lacking Connection to the State

4 Section 351 tolls a limitations period even if, at the time the cause of action
5 accrued, the parties resided outside the state and did not move into the state until
6 much later. This means that a cause of action having no other connection to
7 California may be asserted in the state long after it accrued, simply because the
8 defendant moved to California after the fact.¹⁵ Although this situation may be
9 infrequent, the state should not have to devote judicial resources to such stale
10 claims lacking any significant nexus to the state.

SECTION 351 IS NO LONGER NECESSARY

11 In addition to having serious drawbacks, Section 351 no longer serves a useful
12 purpose.¹⁶ The United States Supreme Court has overturned the jurisdictional
13 doctrine requiring service within the forum state. A state may now exercise
14 personal jurisdiction over any person having minimum contacts with the state.¹⁷
15 Service may be achieved by a variety of means: Under California's longarm
16 statute and other statutes regulating service of process,¹⁸ "any defendant *anywhere*
17 can be served with summons — one way or another."¹⁹ Section 351 is no longer
18 necessary to preserve a plaintiff's rights to redress.²⁰

14. Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1674-75 (1992); see also N.Y. Law Revision Comm'n, Report, *Acts, Recommendation and Study relating to Application of Foreign Periods of Limitation and Tolling of the Statute of Limitations by Absence of Defendant* 127, 168 (legislative doc. # 69, 1943).

15. Comment, *California Code of Civil Procedure Section 351: Who's Really Paying the Toll?*, 23 Pac. L.J. 1639, 1672-73 (1992); see also *Kohan v. Cohan*, 204 Cal. App. 3d 915, 251 Cal. Rptr. 570 (1988). Code of Civil Procedure Section 361, which applies foreign limitations periods to causes of action arising outside California against nonresidents, may bar some such claims. But the borrowing statute is of no use if the borrowed statute of limitations is very long or is subject to liberal tolling rules. See N.Y. Law Revision Comm'n, Report, *Acts, Recommendation and Study relating to Application of Foreign Periods of Limitation and Tolling of the Statute of Limitations by Absence of Defendant* 127, 170 (legislative doc. # 69, 1943); Note, *Limitations of Actions: Absence of the Defendant: Tolling the Statute of Limitations on a Foreign Cause of Action*, 1 UCLA L. Rev. 619, 621 (1954).

16. *But see* note 19, *infra*, regarding small claims cases.

17. Minimum contacts exist when the connection between the person and the state is such that exercising jurisdiction over the person does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

18. See Code Civ. Proc. §§ 410.10, 413.10, 413.30, 415.10-415.50.

19. R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial* § 4.3 (Rutter Group, rev. #1, 1994) (emph. in original). But see Code of Civil Procedure Section 116.340, which requires plaintiffs in most small claims cases to serve process within the state. The Commission's proposed legislation includes a statute preserving out-of-state tolling where that requirement applies. But even where Section 116.340 requires plaintiffs to serve small claims process within the state, such plaintiffs are not

1 Difficulties in serving particular defendants may still occur. But Section 351 is
2 no longer needed to protect plaintiffs encountering problems in serving out-of-
3 state defendants. The law provides other rules better-tailored to addressing
4 difficulty of service of process and its aftermath. These include:

5 **Delay reduction rules.** Under Government Code Section 68616, delay reduction
6 rules may require service of the complaint within 60 days after filing. Many
7 superior courts have adopted a delay reduction deadline for service of process, but
8 the rules generally provide a means of obtaining relief from the deadline if the
9 circumstances warrant it, such as when achieving service is difficult.²¹

10 **Discretionary dismissal.** Sections 583.410 and 583.420 of the Code of Civil
11 Procedure authorize courts to dismiss actions for delay in prosecution if “[s]ervice
12 is not made within two years after the action is commenced against the defendant.”
13 Such dismissals are not mandatory, however, and courts considering whether to
14 dismiss must consider the availability of parties for service of process and the
15 diligence in seeking to effect service of process.²²

16 **Service within three years.** Section 583.210 of the Code of Civil Procedure
17 provides that “[t]he summons and complaint shall be served upon a defendant
18 within three years after the action is commenced against the defendant.” To
19 account for difficulties in achieving service, the statute directs courts applying the
20 three-year deadline to exclude any time during which “[t]he defendant was not
21 amenable to the process of the court” or “[s]ervice, for any other reason, was
22 impossible, impracticable, or futile due to causes beyond the plaintiff’s control.”²³

23 **Trial within five years.** Every civil action “shall be brought to trial within five
24 years after the action is commenced against the defendant.”²⁴ Like the preceding

wholly barred from serving process outside California. Instead of suing in small claims court, they may sue in municipal court and thus avoid the requirement of Section 116.340.

20. O’Laskey v. Sortino, 224 Cal. App. 3d 241, 252 n.8, 273 Cal. Rptr. 674 (1990); Comment, *California Code of Civil Procedure Section 351: Who’s Really Paying the Toll?*, 23 Pac. L.J. 1639, 1648-49, 1676 (1992).

21. See, e.g., Superior Court Rule 7.7, County of Los Angeles (complaint to be served in 60 days but court may extend time upon showing of good cause); Superior Court Rule 1.4, County of San Diego (complaint to be served in 60 days unless a Certificate of Progress has been filed “indicating why service has not been effected on all parties and what is being done to effect service”); Superior Court Rule 2.4, City and County of San Francisco (complaint to be served in 60 days unless an order extending time has been obtained “upon a written application therefor showing why service has not been effected, the steps that have been taken to effect service, and the proposed date by which service is expected to be effected”). To prevent injustice to diligent plaintiffs encountering difficulties serving process, Government Code Section 68616 should be amended to require extension of any delay reduction deadline for service of process where the plaintiff shows that even with the exercise of due diligence, service cannot be achieved in the time required.

22. Rules 372 and 373 of the California Rules of Court outline the procedure for requesting such a dismissal and list factors the court should consider in ruling on the request.

23. Code Civ. Proc. § 583.240.

24. Code Civ. Proc. § 583.310.

1 rules, this deadline accommodates difficulties in serving process. Courts applying
2 the five-year deadline must exclude any time during which it was “impossible,
3 impracticable, or futile” to bring the action to trial.²⁵

4 ***Default judgments based on process other than personal service.*** A plaintiff
5 resorting to a method of service other than personal service may on occasion
6 obtain a default judgment against a defendant who never got actual notice of the
7 action. Within a reasonable time (up to two years) after entry of the judgment, the
8 defendant may move to set it aside, and the court may grant the motion “on
9 whatever terms as may be just.”²⁶ Courts also have inherent, equitable power to set
10 aside judgments due to extrinsic fraud or mistake.²⁷ These doctrines may be
11 invoked to relieve defendants from the consequences of judgments entered without
12 their participation. Any such relief is to be on equitable terms, however, protecting
13 the interests of diligent plaintiffs who could not achieve personal service.

COMMISSION RECOMMENDATION

14 Statutes of limitations protect defendants from being unfairly surprised by stale
15 claims — claims that may no longer be fairly tried because evidence has been
16 misplaced, witnesses have disappeared, and facts have been forgotten.²⁸ The
17 tolling required by Section 351 is inconsistent with these objectives, unfair in its
18 application, unreasonably burdensome on limited judicial resources, and
19 unconstitutional as applied to cases involving interstate commerce. Under modern
20 concepts of personal jurisdiction and service of process, there is no countervailing
21 justification for these detriments. Section 351 is an anachronism that should be
22 repealed.

25. Code Civ. Proc. § 583.340.

26. Code Civ. Proc. § 473.5.

27. R. Weil & I. Brown, Jr., California Practice Guide: Civil Procedure Before Trial § 5:435 (Rutter Group, rev. #1, 1994). The terms extrinsic fraud and mistake “are given a broad interpretation and cover almost any circumstance by which a party has been *deprived of a fair hearing.*” *Id.* at § 5:438; *see also In re Marriage of Park*, 27 Cal. 3d 337, 342, 612 P.2d 882, 165 Cal. Rptr. 792 (1980).

28. *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 349 (1944).

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 116.350 (added) Tolling of limitation periods**

2 SECTION 1. Section 116.350 is added to the Code of Civil Procedure, to read:

3 116.350. (a) In computing the statute of limitations on a claim, any time during
4 which Section 116.340 precluded service on the defendant shall be excluded.

5 (b) Subdivision (a) applies regardless of whether the claim is transferred from
6 small claims court to another court, but if the amount of the claim is increased
7 following the transfer, subdivision (a) does not apply to any excess over the
8 jurisdictional limit of the small claims court applicable at the time the case was
9 filed.

10 (c) The time excluded pursuant to subdivision (a), whether continuous or
11 interrupted, is limited to five years for any claim.

12 **Comment.** Section 116.350 is a new provision that preserves limited tolling in specified small
13 claims cases. This section is added in light of the repeal of Section 351, which tolled the statute of
14 limitations when the defendant was out of the state. In most contexts, such tolling is no longer
15 necessary, because plaintiffs may serve defendants outside the state. See former Section 351
16 Comment. In small claims cases, however, Section 116.340 generally precludes out-of-state
17 service. Under subdivision (a), tolling continues in that context.

18 Under subdivision (b), asserting an inflated cross-claim in another court and successfully
19 seeking transfer of the small claims case to the other court pursuant to Section 116.390 does not
20 affect the availability of tolling and so is not a means of defeating a claim that is timely only if
21 out-of-state tolling applies.

22 Subdivision (c) furthers the goal of finality and prevents stale claims by setting an absolute
23 five-year time limit on tolling pursuant to subdivision (a). Where the combined effect of
24 subdivision (c) and Section 116.340 would preclude a plaintiff from suing in small claims court,
25 the plaintiff has the alternative of suing in municipal court. *Compare* Section 116.220
26 (jurisdiction of small claims courts) *with* Section 86 (jurisdiction of municipal courts).

27 **Code Civ. Proc. § 351 (repealed). Tolling limitations period when defendant is absent**

28 SEC. 2. Section 351 of the Code of Civil Procedure is repealed.

29 ~~351. If, when the cause of action accrues against a person, he is out of the State,
30 the action may be commenced within the term herein limited, after his return to the
31 State, and if, after the cause of action accrues, he departs from the State, the time
32 of his absence is not part of the time limited for the commencement of the action.~~

33 **Comment.** Section 351 is repealed consistent with modern concepts of personal jurisdiction
34 and service of process. *See* Sections 410.10, 413.10, 413.30, 415.20-415.50; *see also* International
35 Shoe Co. v. Washington, 326 U.S. 310 (1945); *cf.* Pennoyer v. Neff, 95 U.S. 714 (1877)
36 (endorsing now outmoded doctrine that defendant must be served in state to confer in personam
37 jurisdiction). Section 351 is unconstitutional as applied to cases involving interstate commerce.
38 *See* Abramson v. Brownstein, 897 F.2d 389 (9th Cir. 1990). For further background and
39 explanation, see Comment, *California Code of Civil Procedure Section 351: Who's Really*
40 *Paying the Toll*, 23 Pac. L.J. 1639 (1992); Note, *Limitations of Actions: Absence of the*
41 *Defendant: Tolling the Statute of Limitations on a Foreign Cause of Action*, 1 UCLA L. Rev. 619
42 (1954).

1 For causes of action accruing before the effective date of the repeal, the act that repealed this
2 section provides a one-year grace period, so that a plaintiff relying on the tolling of the repealed
3 statute as a basis for delaying suit has adequate opportunity to commence an action.

4 **Gov't Code § 68616 (operative until Jan. 1, 1999) (amended). Delay reduction deadlines and**
5 **procedures**

6 SEC. 3. Section 68616 of the Government Code (operative until Jan. 1, 1999) is
7 amended to read:

8 68616. Delay reduction rules shall not require shorter time periods than as
9 follows:

10 (a) Service of the complaint within 60 days after filing. Exceptions, for longer
11 periods of time, may be granted as authorized by local rule *and shall be granted on*
12 *a showing that service cannot be achieved within the time required with the*
13 *exercise of due diligence.*

14 (b) Service of responsive pleadings within 30 days after service of the complaint.
15 The parties may stipulate to an additional 15 days. Exceptions, for longer periods
16 of time, may be granted as authorized by local rule.

17 (c) Time for service of notice or other paper under Sections 1005 and 1013 of
18 the Code of Civil Procedure and time to plead after service of summons under
19 Section 412.20 of the Code of Civil Procedure shall not be shortened except as
20 provided in those sections.

21 (d) Within 30 days of service of the responsive pleadings, the parties may, by
22 stipulation filed with the court, agree to a single continuance not to exceed 30
23 days.

24 It is the intent of the Legislature that these stipulations not detract from the
25 efforts of the courts to comply with standards of timely disposition. To this extent,
26 the Judicial Council shall develop statistics that distinguish between cases
27 involving, and not involving, these stipulations.

28 (e) No status conference, or similar event, other than a challenge to the
29 jurisdiction of the court, may be required to be conducted sooner than 30 days
30 after service of the first responsive pleadings, or no sooner than 30 days after
31 expiration of a stipulated continuance, if any, pursuant to subdivision (d).

32 (f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of
33 the Code of Civil Procedure shall govern discovery, except in arbitration
34 proceedings.

35 (g) An order referring an action to arbitration or mediation may be made at any
36 status conference held in accordance with subdivision (e), provided that any
37 arbitration ordered may not commence prior to 210 days after the filing of the
38 complaint, exclusive of the stipulated period provided in subdivision (d). Any
39 mediation ordered pursuant to Section 1775.3 of the Code of Civil Procedure may
40 be commenced prior to 210 days after the filing of the complaint, exclusive of the
41 stipulated period provided in subdivision (d). No rule adopted pursuant to this
42 article may contravene Sections 638 and 639 of the Code of Civil Procedure.

1 (h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of
2 the introduction of evidence at trial, except upon stipulation or motion of the
3 parties.

4 (i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct
5 calendar courts, challenges pursuant to that section shall be exercised within 15
6 days of the party's first appearance. Master calendar courts shall be governed
7 solely by Section 170.6 of the Code of Civil Procedure.

8 (j) This section applies to all cases subject to this article which are filed on or
9 after January 1, 1991.

10 (k) This section shall remain in effect only until January 1, 1999, and as of that
11 date is repealed, unless a later enacted statute, which is enacted before January 1,
12 1999, deletes or extends that date.

13 **Comment.** Subdivision (a) of Section 68616 is amended to ensure that delay reduction
14 deadlines for service of process are extended when plaintiffs are unable to achieve service within
15 the prescribed period despite diligent efforts to do so. This amendment is necessary to adjust the
16 delay reduction rules to take account of the repeal of Code of Civil Procedure Section 351, which
17 tolled the statute of limitations when the defendant was out of the state. However, the new rule
18 applies regardless of whether the hard-to-serve defendant is in the state or not.

19 **Gov't Code § 68616 (operative Jan. 1, 1999) (amended). Delay reduction deadlines and**
20 **procedures**

21 SEC. 4. Section 68616 of the Government Code (operative Jan. 1, 1999) is
22 amended to read:

23 68616. Delay reduction rules shall not require shorter time periods than as
24 follows:

25 (a) Service of the complaint within 60 days after filing. Exceptions, for longer
26 periods of time, may be granted as authorized by local rule *and shall be granted on*
27 *a showing that service cannot be achieved within the time required with the*
28 *exercise of due diligence.*

29 (b) Service of responsive pleadings within 30 days after service of the complaint.
30 The parties may stipulate to an additional 15 days. Exceptions, for longer periods
31 of time, may be granted as authorized by local rule.

32 (c) Time for service of notice or other paper under Sections 1005 and 1013 of
33 the Code of Civil Procedure and time to plead after service of summons under
34 Section 412.20 of the Code of Civil Procedure shall not be shortened except as
35 provided in those sections.

36 (d) Within 30 days of service of the responsive pleadings, the parties may, by
37 stipulation filed with the court, agree to a single continuance not to exceed 30
38 days.

39 It is the intent of the Legislature that these stipulations not detract from the
40 efforts of the courts to comply with standards of timely disposition. To this extent,
41 the Judicial Council shall develop statistics that distinguish between cases
42 involving, and not involving, these stipulations.

1 (e) No status conference, or similar event, other than a challenge to the
2 jurisdiction of the court, may be required to be conducted sooner than 30 days
3 after service of the first responsive pleadings, or no sooner than 30 days after
4 expiration of a stipulated continuance, if any, pursuant to subdivision (d).

5 (f) Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of
6 the Code of Civil Procedure shall govern discovery, except in arbitration
7 proceedings.

8 (g) No case may be referred to arbitration prior to 210 days after the filing of the
9 complaint, exclusive of the stipulated period provided for in subdivision (d). No
10 rule adopted pursuant to this article may contravene Sections 638 and 639 of the
11 Code of Civil Procedure.

12 (h) Unnamed (DOE) defendants shall not be dismissed prior to the conclusion of
13 the introduction of evidence at trial, except upon stipulation or motion of the
14 parties.

15 (i) Notwithstanding Section 170.6 of the Code of Civil Procedure, in direct
16 calendar courts, challenges pursuant to that section shall be exercised within 15
17 days of the party's first appearance. Master calendar courts shall be governed
18 solely by Section 170.6 of the Code of Civil Procedure.

19 (j) This section applies to all cases subject to this article which are filed on or
20 after January 1, 1991.

21 (k) This section shall become operative on January 1, 1999.

22 **Comment.** Subdivision (a) of Section 68616 is amended to ensure that delay reduction
23 deadlines for service of process are extended when plaintiffs are unable to achieve service within
24 the prescribed period despite diligent efforts to do so. This amendment is necessary to adjust the
25 delay reduction rules to take account of the repeal of Code of Civil Procedure Section 351, which
26 tolled the statute of limitations when the defendant was out of the state. However, the new rule
27 applies regardless of whether the hard-to-serve defendant is in the state or not.

28 **Rev. & Tax. Code § 177 (amended). Deeds issued by taxing agencies**

29 SEC. 5. Section 177 of the Revenue and Taxation Code is amended to read:

30 177. (a) A proceeding based on an alleged invalidity or irregularity of any deed
31 heretofore or hereafter issued upon the sale of property by any taxing agency,
32 including taxing agencies which have their own system for the levying and
33 collection of taxes, in the enforcement of delinquent property taxes or assessments,
34 or a proceeding based on an alleged invalidity or irregularity of any proceedings
35 leading up to such *the* deed, can only be commenced within one year after the date
36 of recording of such *the* deed in the county recorder's office ~~or within one year~~
37 ~~after June 1, 1954, whichever is later.~~

38 (b) A defense based on an alleged invalidity or irregularity of any deed
39 heretofore or hereafter issued upon the sale of property by any taxing agency,
40 including taxing agencies which have their own system for the levying and
41 collection of taxes, in the enforcement of delinquent property taxes or assessments,
42 or a defense based on an alleged invalidity or irregularity of any proceedings
43 leading up to such *the* deed, can only be maintained in a proceeding commenced

1 within one year after the date of recording of such *the* deed in the county
2 recorder's office or within one year after June 1, 1954, whichever is later.

3 (c) Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not
4 apply to the time within which a proceeding may be brought under the provisions
5 of this section.

6 (d) Nothing in this section shall operate to extend the time within which any
7 proceeding based on the alleged invalidity or irregularity of any tax deed may be
8 brought under any other section of this code.

9 (e) This section shall not apply to any deed issued by a taxing agency within five
10 years from the time the property was sold to said taxing agency.

11 **Comment.** Section 177 is amended to reflect the repeal of Code of Civil Procedure Section
12 351. The amendment also deletes obsolete language and makes other technical revisions.

13 **Rev. & Tax. Code § 3725 (amended). Proceeding based on invalidity or irregularity**

14 SEC. 6. Section 3725 of the Revenue and Taxation Code is amended to read:

15 3725. A proceeding based on alleged invalidity or irregularity of any
16 proceedings instituted under this chapter can only be commenced within one year
17 after the date of execution of the tax collector's deed.

18 Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not apply
19 to the time within which a proceeding may be brought under this section.

20 **Comment.** Section 3725 is amended to reflect the repeal of Code of Civil Procedure Section
21 351.

22 **Rev. & Tax. Code § 3809 (amended). Proceeding based on invalidity or irregularity**

23 SEC. 7. Section 3809 of the Revenue and Taxation Code is amended to read:

24 3809. A proceeding based on alleged invalidity or irregularity of any agreement
25 or deed executed under this article can only be commenced within one year after
26 the execution of the instrument.

27 Sections ~~351~~ 352 to 358, inclusive, of the Code of Civil Procedure do not apply
28 to the time within which a proceeding may be brought under this section.

29 **Comment.** Section 3809 is amended to reflect the repeal of Code of Civil Procedure Section
30 351.

31 **Veh. Code § 17463 (repealed). Computation of limitations period**

32 SEC. 8. Section 17463 of the Vehicle Code is repealed.

33 ~~17463. Notwithstanding any provisions of Section 351 of the Code of Civil~~
34 ~~Procedure to the contrary, when summons may be personally served upon a person~~
35 ~~as provided in Sections 17459 and 17460, the time of his absence from this State is~~
36 ~~part of the time limited for the commencement of the action described in those~~
37 ~~sections, except when he is out of this State and cannot be located through the~~
38 ~~exercise of reasonable diligence, except this section in no event shall be applicable~~
39 ~~in any action or proceeding commenced on or before September 7, 1956.~~

40 **Comment.** Section 17463 is repealed to reflect the repeal of Code of Civil Procedure Section
41 351. For causes of action accruing before the effective date of the repeals, the act that repealed

1 this section provides a one-year grace period, so that a plaintiff relying on the tolling of a repealed
2 statute as a basis for delaying suit has adequate opportunity to commence an action.

3 **Transitional provision**

4 SEC. 9. Notwithstanding the repeal by this act of Section 351 of the Code of
5 Civil Procedure and Section 17463 of the Vehicle Code, if a cause of action
6 accrued before the effective date of this act:

7 (a) Those sections shall continue to apply to the cause of action for a period of
8 one year after the effective date.

9 (b) Any tolling under those sections before the effective date or, pursuant to
10 subdivision (a), after the effective date, shall be taken into account in computing
11 the time limited for commencement of the action.

12 **Comment.** For causes of action accruing before the effective date of this act, the transitional
13 provision affords a one-year grace period, so that a plaintiff relying on the tolling of a repealed
14 statute as a basis for delaying suit has adequate opportunity to commence an action.